SB 141-FN - AS AMENDED BY THE SENATE

03/18/2021 0876s
04/01/2021 1053s

2021 SESSION

21-0955
04/10

SENATE BILL ***141-FN***

AN ACT relative to the procedure for conducting firearm background checks.

SPONSORS: Sen. Giuda, Dist 2; Sen. Avard, Dist 12; Rep. Burt, Hills. 39; Rep. Edwards, Rock. 4; Rep. Rhodes, Ches. 15; Rep. Gorski, Hills. 7; Rep. Kelsey, Hills. 7

COMMITTEE: Judiciary

AMENDED ANALYSIS

This bill authorizes the FBI to conduct all National Instant Criminal Background Check System (NICS) searches concerning the purchase, sale, and transfer of firearms through Federal Firearm Licensees operating in New Hampshire; abolishes the "gun line" in the division of state police; repeals the state's partial point of contact system for handguns, allowing the authority to remain exclusively with the FBI; and authorizes county sheriffs to conduct background searches using NICS for the purpose of approving or denying the return of firearms to individuals who are subject to a protective order for domestic violence or stalking. The bill also makes an appropriation to the county sheriff's offices for hardware and software equipment purchase and training.

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Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT relative to the procedure for conducting firearm background checks.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Findings. The general court finds that:

I. The New Hampshire gun line, in the department of safety, permits and licensing unit, currently performs all background checks in relation to the store purchase of handguns. It also performs background checks regarding the transfer of firearms from law enforcement agencies back to individual owners in relation to restraining order and criminal proceedings. The gun line uses the National Instant Criminal Background Check System ("NICS") to perform these tasks, serving as the partial "Point of Contact" system for the FBI.

II. The gun line's inefficiencies have created significant delays in the orderly processing of firearm- related background checks. Courts and Federal Firearm Licensed Dealers have faced incredible backlogs of pending background checks that are intended to be "instant." Many background checks have remained pending for several months. This has come at a great cost to the economic wellbeing of dealers and the constitutional rights of firearm owners and purchasers. Additionally, the gun line has, on multiple occasions, failed to timely deny firearm transfers to prohibited individuals.

III. This bill allows the FBI to conduct all National Instant Criminal Background Check System ("NICS") searches concerning the purchase, sale and transfer of firearms through Federal Firearm Licensed Dealers operating in the state of New Hampshire. This bill effectively repeals the state's partial Point of Contact system for handguns, allowing the authority to remain exclusively with the FBI. The FBI is federally funded to perform this task and has a long history of accuracy and efficiency with its use of NICS. The FBI provides faster responses in regard to approving the background checks of nonprohibited purchasers, while simultaneously issuing faster denials of attempted purchases by prohibited individuals. This bill saves state tax dollars while producing better results, protecting the rights of law-abiding citizens and protecting the safety of domestic violence victims. Also, this bill provides the sheriff's office for each county with the authority and obligation to conduct background searches using NICS for the purpose of approving or denying the return of firearms to individuals who have been the subject of restraining order proceedings or criminal proceedings

2 Criminal Background Checks; Sale of Firearms. RSA 159-D:1 and 159-D:2 are repealed and reenacted to read as follows:

159-D:1 Sale of Firearms; Criminal History Record and Protective Order Check.

I.(a) The Federal Bureau of Investigation ("FBI") shall have the exclusive authority and jurisdiction to conduct background checks in relation to the sale or transfer of firearms involving Federal Firearms Licensed Dealers ("FFL") in New Hampshire. This provision and the FBI's exclusive jurisdiction pertain to all firearms, as defined by federal law pursuant to 18 U.S.C. section 921(a)(3), regardless of caliber, barrel length, or firearm type.

(b) No state agency or political subdivision shall access the National Instant Criminal Background Check System ("NICS") unless specifically authorized by this chapter.

(c) Nothing in this chapter shall be construed to limit, prevent, or impose background check requirements on the private transfer of firearms as otherwise not prohibited by RSA 159 or federal law.

II. For the purpose of determining whether an individual is prohibited by federal or state statute from firearm possession or ownership in relation to a motion or requested return of firearms in connection with a restraining order under RSA 173-B or RSA 633:3-a, or criminal proceeding in any state court of competent jurisdiction, the sheriff's office for the county in which the court is situated shall access NICS to perform a background check. The following conditions, process and time constraints shall apply to all such background checks:

(a) The county sheriff's office shall initiate the NICS background check within 10 business days of the date of filing of the motion or other pleading requesting the return of firearms.

(b) Within 15 business days of the date of filing of the motion or other pleading requesting the return of firearms, the county sheriff's office shall provide a conclusive decision to the court stating either "proceed" or "deny." This decision will be based solely on whether or not the individual is prohibited from possessing or owning a firearm according to state or federal statute. Should the NICS background check fail to demonstrate that the petitioner is prohibited from firearm possession within the 15-business-day time period stated in this chapter, the sheriff's office shall provide a "proceed" decision to the court.

(c) If the county sheriff's office determines that an individual is prohibited from owning or possessing a firearm, a specific citation to statute, such as one of the prohibited categories listed under 18 U.S.C. section 922(g), and the specific facts relied upon for finding that the individual is a prohibited person must be supplied in a narration with the "deny" response. The narration supporting a deny response shall be held in a confidential record with the court and only accessible to court staff, the individual seeking the return of firearms and his or her designated legal counsel.

(d) All records retained by any county sheriff's office or court concerning a background check conducted pursuant to this chapter shall be destroyed within one business day of transmitting a "proceed" determination to the court. Should a "deny" determination be made, all records shall be destroyed by the county sheriff's office within 30 days of the later of the following:

(1) The expiration of the deadline for filing a petition or notice of appeal in the trial court; or

(2) The exhaustion or expiration of all appeal rights included in RSA 159-D:2.

(e) For the purpose of carrying out the requirements of this chapter, each county sheriff's office shall register with NICS and obtain sufficient training so that each office is situated to begin fully fulfilling its limited background check functions required by this chapter by January 1, 2022.

159-D:2 Appeal of Denials.

I. Any person who has received a denial of a motion or other pleading requesting the return of firearms shall have the right to request a further hearing on the matter within 30 days of the date of denial. The request may be made by written or oral motion to the court. Any requested hearing shall occur within 10 business days after the date of the request. During the hearing, the burden will be placed on the county sheriff, or his or her designee, to prove by clear and convincing evidence that the petitioning party is prohibited from possessing or owning a firearm pursuant to state or federal statute. The court shall issue a decision on the matter within 10 business days after the hearing occurs.

II. Should any person seeking the return of firearms be aggrieved by the ruling made by the trial court regarding a motion or other request for the return of firearms, such individual shall be entitled to appeal and have his or her case heard by the New Hampshire supreme court. In any such case, a transcript of the proceedings and the trial court's record shall be transmitted to the supreme court in full, without any fee charged to the petitioner.

3 New Paragraph; Protection of Persons From Domestic Violence; Notification. Amend RSA 173-B:8 by inserting after paragraph III the following new paragraph:

IV. Any temporary or final court order requiring the relinquishment of firearms or prohibiting the possession of firearms under RSA 173-B or RSA 633:3-a shall, within 24 hours of issuance, be submitted by the court into the NICS system directly or, alternatively, be transmitted to the New Hampshire department of safety to be added to the NICS system within 24 hours of receipt. Additionally, when any of the following events occur, the court will update the NICS system directly or transmit the updated information to the New Hampshire department of safety to be updated in NICS within 24 hours of receipt:

(a) Any modification or dismissal of a firearm relinquishment

(b) Any modification or dismissal of an order prohibiting firearm possession.

(c) The dismissal of any temporary restraining order.

(d) The dismissal of any final restraining order.

4 New Paragraph; Interference With Freedom; Stalking. Amend RSA 633:3-a by inserting after paragraph III-d the following new paragraph:

III-e. Any temporary or final court order requiring the relinquishment of firearms or prohibiting the possession of firearms under RSA 173-B or RSA 633:3-a shall, within 24 hours of issuance, be submitted by the court into the NICS system directly or, alternatively, be transmitted to the New Hampshire department of safety to be added to the NICS system within 24 hours of receipt.

Additionally, when any of the following events occur, the court will update the NICS system directly or transmit the updated information to the New Hampshire department of safety to be updated in NICS within 24 hours of receipt:

(a) Any modification or dismissal of a firearm relinquishment

(b) Any modification or dismissal of an order prohibiting firearm possession.

(c) The dismissal of any temporary restraining order.

(d) The dismissal of any final restraining order.

5 Department of Safety; Division of State Police; Permits and Licensing Unit; New Hampshire State Gun Line Abolished. The New Hampshire state gun line, in the permits and licensing unit of the division of state police, department of safety, is hereby abolished.

6 New Sections; Criminal Background Checks; Immunity for Sheriffs and Sheriff's Employees. Amend RSA 159-D by inserting after section 3 the following new sections:

159-D:4 Civil or Criminal Liability of Sheriffs and Sheriff's Employees. The county sheriff and county sheriff's office employees shall not be liable in a civil or criminal action for any act or omission in the performance of their powers and duties under this chapter.

159-D:5 Use of Federal Government Information Systems. Nothing in this chapter shall prohibit any law enforcement agency or its personnel from utilizing the federal National Instant Criminal Background Check System, or any of its component or successor systems, or any other government information system necessary to perform their duties as permitted by New Hampshire statute.

7 County Sheriff's Offices; Appropriation for Hardware, Software and Training. The sum of $100,000 for the fiscal year ending June 30, 2021 is hereby appropriated as follows: the sum of $10,000 shall be appropriated to each county sheriff's office for the purchase of hardware and software and to defray training costs required to comply with the provisions of RSA 159-D. The sum shall be a charge against the department of safety, permits and licensing account 02-23-23-234010-2913, line 050.

8 Effective Date.

I. Section 7 of this act shall take effect upon its passage.

II. The remainder of this act shall take effect June 1, 2022.

LBA
21-0955
Amended 4/21/21

SB 141-FN- FISCAL NOTE

AS AMENDED BY THE SENATE (AMENDMENTS #2021-0876s and #2021-1053s)

AN ACT relative to the procedure for conducting firearm background checks.

FISCAL IMPACT: [X] State [X] County [ ] Local [ ] None

	Estimated Increase / (Decrease)			
STATE:	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**
Appropriation	See Methodology	$0	$0	$0
Revenue	$0	$0	$0	$0
Expenditures	See Methodology	Indeterminable	Indeterminable	Indeterminable
Funding Source:	[X] General [ ] Education [ ] Highway [X] Other - Permits and Licensing Accounting Unit			

COUNTY:

Revenue	See Methodology	$0	$0	$0
Expenditures	Indeterminable	Indeterminable	Indeterminable	Indeterminable

METHODOLOGY:

This bill includes the following:

- Abolishes the State Gun Line within the Department of Safety Division of State Police Permits and Licensing Unit.
- Authorizes the Federal Bureau of Investigations (FBI) to exclusive conduct background checks for the purchase, sale, and transfer of Federal Firearms Licensees (FFL) in New Hampshire.
- Relieves the responsibility of the state for providing National Instant Criminal Background System (NICS) background checks on all commercial sales of handguns sales and return of firearms cases, in the State of New Hampshire.
- Allows County Sheriffs to utilize the NICS to conduct background checks around returning or denying individuals requesting their firearms back after being subject to a protective order.

The Judicial Branch states the total fiscal impact is indeterminable due to the following:

- The bill would require the Judicial Branch to enter data into the NICS Index which it does not currently do resulting in an expenditure to make the NICS Index accessible to Judicial Branch personnel.

- In approximately 6% of cases where a protection order has been issued they do not have the name of the defendant requiring these cases be entered into the NICS Index. New Hampshire law enforcement does not have access to the NICS Index while in the field and the same data will need to be entered into the National Crime Information Center (NCIC). The Judicial Branch states the need to enter data into two databases will result in 50 additional hours per year of court staff time as there are approximately 1,500 files impacted per year.
- The Judicial Branch states it has been told by the Department of Safety that the Gun Line does a search of its entire case database which is approximately 5 million cases, 170,000 of which the Department has no disposition data on. If Gun Line is abolished the Judicial Branch estimates these 170,000 files will need to be researched by a Court Assistant II. The Judicial Branch estimates this would require approximately 42,500 hours in staff time based on a rate of researching four files per hour and result in a cost of approximately $1.2 million. The impact does not include research time associated with court personnel searching the entire database for an unknown number of cases with a disposition but an inconclusive record.
- The bill provides any person seeking the return of firearms who is aggrieved by the ruling is entitled to an appeal and transcript of the proceedings without charge to the petitioner. The fiscal impact of transmitting records and creating transcripts is indeterminable; however, the cost associated with producing a transcription is approximately $137.50 per .5 hours of hearing time.

The Department of Safety states the completing of returns of firearms background checks for the courts was supported by an additional duty shared amongst staff and therefore an elimination of this duty will not impact staffing levels. However, the bill makes a charge to the Department's Permit and Licensing Unit, budget line 02-23-23-234010-2913-050, in the amount of $100,000 and appropriates the money in $10,000 increments to each county sheriff's office for the fiscal year ending June 30, 2021. It should be noted this class line's authorized budget was only $80,000 to begin this fiscal year and the Department has already utilized much of it. Therefore, $100,000 from this class line would not be available for the purpose of this bill as written.

The New Hampshire Association of Counties states it is unsure at this time whether the requirements of this bill would require additional training or personnel and is therefore unable to estimate if there will be an impact on county expenditures.

AGENCIES CONTACTED:

Department of Safety, Judicial Branch, and New Hampshire Association of Counties